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October 17, 2005

Ms. Rini Ghosh  
Section of Environmental Analysis  
Surface Transportation Board  
Washington, DC 20423

*received  
10/24/05*

Re: *Lamoille Valley R.R. Co. – Abandonment Exemption – In Caledonia,  
Washington, Orleans, Lamoille, and Franklin Counties, VT*  
STB Docket No. AB-444 (Sub-No. 1X),


Dear Ms Ghosh:

This is in response to your letter of June 17, 2005.

The applicant carrier in the above matter, the Lamoille Valley Railroad Company (LVRC), is now defunct and has surrendered its leasehold to the State of Vermont, from which LVRC formerly leased the subject railroad line. I do not have any authority to make any representations on behalf of the now-defunct LVRC.

Moreover, please note that in a prior decision involving part of this very line, the Board recognized that it “can impose historic preservation conditions only to the extent the particular property is owned by the applicant carrier and has a sufficient nexus to the proposal under review. *Lamoille Valley R.R. Co. – Abandonment and Discontinuance of Service – In Franklin and Lamoille Counties, VT*, Docket No. AB-444X (STB served Oct. 17, 1996) (copy attached).

Sincerely,

  
Charles F. Miller, Rail Operations Manager

Cc: John K. Dunleavy, Assistant Attorney General  
Eric Gilbertson, Vermont Division for Historic Preservation

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DOSURFACE TRANSPORTATION BOARD<sup>1</sup>

## DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-444X

LAMOILLE VALLEY RAILROAD COMPANY--ABANDONMENT AND DISCONTINUANCE  
OF SERVICE EXEMPTION--IN FRANKLIN AND LAMOILLE COUNTIES, VT

Decided: October 11, 1996

Lamoille Valley Railroad Company (LVRC) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances of Services to abandon and discontinue service over 44.4 miles of railroad line from railroad milepost 95.324, in Swanton, to railroad milepost 94.288, in Swanton, and from railroad milepost 92.000 in Highgate, to railroad milepost 48.614 in Morrisville, in Franklin and Lamoille Counties, VT. Notice of the exemption was served and published in the Federal Register on September 18, 1996 (61 FR 49191). The exemption is scheduled to become effective on October 18, 1996.<sup>2</sup>

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding, served September 26, 1996. SEA indicates that the U.S. Army Corps of Engineers has stated that it has concerns regarding impacts to wetlands and waterways but that further information from LVRC is needed to determine these impacts and recommends that LVRC consult with U.S. Army Corps of Engineers, Camp Johnson, Building 10-18, Colchester, Vermont. Therefore, SEA recommends that LVRC shall consult with the Corps, provide any further necessary information, and inform the Board's SEA of the Corps' findings. Also, in the EA, SEA had recommended that LVRC retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

The State of Vermont (Vermont) has informed SEA that the entire right-of-way belongs to the State, including tracks, ties, bridges, culverts, two depots, and all appurtenances necessary to operate the rail line. Vermont granted LVRC operating rights over the line. In abandonment and discontinuance proceedings involving historic sites or structures in which the applicant railroad owns the right-of-way and all operating appurtenances, the Board normally meets its obligation to comply with section 106 by imposing a condition requiring completion of the section 106 process. It is now apparent, however, that LVRC does not own the tracks or ties or any other appurtenances pertaining to the right-of-way. As stated in Implementation of Environmental Laws, 7 I.C.C.2d 807 (1991), the Board "can impose historic preservation conditions only to the extent the particular property is owned by the applicant carrier and has a sufficient nexus to the proposal under review." Id. at 828-29. Therefore,

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

<sup>2</sup> The effectiveness of the abandonment is stayed pending further notification from Vermont that it is going to discontinue rail banking.

since the State owns all the property involved, and since the Board cannot impose conditions on properties that are not owned by LVRC, SEA recommends that no section 106 condition be imposed.

On September 19, 1996, Vermont requested a notice of interim trail use/rail banking (NITU) for the entire line pursuant to section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d). Vermont states that it will hold the corridor intact for rail banking and interim trail use. In its petition, Vermont indicates that, in compliance with 49 CFR 1152.29, it will assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability in which case it need only indemnify the railroad against any potential liability) and for the payment of any and all taxes that may be levied or assessed against the right-of-way. Vermont also acknowledges that use of the right-of-way for trail purposes is subject to future reactivation for rail service.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The notice of exemption served and published in the Federal Register on September 18, 1996, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking<sup>3</sup> and is subject to the condition that LVRC shall consult with the U.S. Army Corps of Engineers, Camp Johnson, Building 10-18, Colchester, VT 05446, provide the Corps with any further necessary information, and inform SEA of the Corps' findings.
3. Vermont must notify the Board if it is going to discontinue rail banking, thus permitting the abandonment to be consummated.
4. Interim trail use/rail banking is subject to the future restoration of rail service.
5. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>3</sup> See Dallas Area Rapid Transit--Abandonment Exemption--in Dallas County, TX, Docket No. AB-439X (ICC served July 3, 1995).